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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,908	11/28/2003	Laurence Scott Pitcher		1893
7590	04/13/2005		EXAMINER	
Laurence S. Pitcher 5160 Park Vista Blvd. Colorado Springs, CO 80918-2444			BOMBERG, KENNETH	
			ART UNIT	PAPER NUMBER
			3754	
DATE MAILED: 04/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/722,908	PITCHER, LAURENCE SCOTT	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kenneth Bomberg	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. The Jacobs 6,561,385 and Sparr 4,817,823 references explicitly discussed were considered and listed on the PTO-892.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Among the errors in the claims are:

Indefinite language within the context of the claim such as “could be”, “varying”, and “variable”. Only the first letter of the claim should be capitalized as claims are required to be in a single sentence form. Alternative language is used in a single clause to describe features that are not mutually exclusive such as the shape of the band and the material from which it is made. Claim 2 appears to improperly combine a method of use claim with an apparatus claim. Claim 2 improperly makes reference to itself in the body of the claim. The above noted errors are provided by way of example and do not cover all the errors in the claim.

NOTE: THE FOLLOWING ART BASED REJECTION OF THE CLAIMS HAVE BEEN MADE AS BEST AS THE CLAIMS ARE UNDERSTOOD IN VIEW OF THE NUMEROUS ERRORS NOTED BELOW.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being antiquated by Meinerding et al. (US 4,807,782).

In figures 1, 4, and 5 and in columns 1-2, Meinerding et al. teaches of an elastic band/loop (rubber band 18) used to close a collapsible tube (10). "The lower portion of tube 16 is rolled up, and is held in place by rubber band 18 which passes through the center of the roll and across opposing face of tube 10." (see column 2, lines 20-24). The band 18 includes a sleeve (28) with writing (30) for decoration, advertising, etc.

6. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Fox (US 6,672,478).

In figures 1-4, and in columns 3-4, Fox teaches of an elastic band/loop (elastic band 4) used to close a collapsible tube (1). In particular in the paragraph spanning columns 3-4, Fox teaches:

The band will preferably be an endless or continuous elastic band of rubber or similar elastic material. The band should be wide enough to provide sufficient restraint on the folded tube and be easy to remove and re-position as the number of folds increases. The preferred band will be long enough to stretch once around the diameter of the tubes of different sizes and have sufficient elasticity to be to be adequately taut for a variety of tube sizes. While using a longer elastic band would certainly be feasible, wrapping a longer band several times around a tube would tend to defeat the simplicity and convenience of the disclosed method and apparatus.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Anthony is included because a logo is taught being placed directly upon a tube squeezer. The remaining prior art listed on the attached Notice of Reference Cited have been included because they teach the use of elastic bands to hold tubes in a collapsed state.

Art Unit: 3754

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is 571-272-4922. The examiner can normally be reached on Monday, Tuesday, Thursday and alternative Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.B.



KENNETH BOMBERG  
PRIMARY EXAMINER